

THE RECORD OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

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Association Activities

AT THE ANNUAL MEETING of the Association, held on May 10, the following officers and members of Committees were elected:

PRESIDENT

Robert P. Patterson

VICE PRESIDENTS

John M. Harlan

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EXECUTIVE COMMITTEE

CLASS OF 1953

Thomas O'Gorman FitzGibbon

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COMMITTEE ON ADMISSIONS

CLASS OF 1952

Aaron Benenson	Florence M. Kelley
Richard C. Berresford	Henry V. Poor
S. Hazard Gillespie, Jr.	Manuel L. Robbins
	Rowland Stebbins, Jr.

COMMITTEE ON AUDIT

Dana Rodman Koons	Alexander Caldwell Neave
	Sigourney Butler Olney

Mr. Berresford found it necessary to decline election to the Committee, and the Executive Committee on June 7 elected in his place Arthur E. Palmer, Jr.



AT THE ANNUAL MEETING The Honorable John T. Loughran, Chief Judge of the Court of Appeals of the State of New York and The Honorable Learned Hand, Chief Judge of the United States Court of Appeals for the Second Circuit, made brief addresses accepting honorary membership in the Association. Bethuel M. Webster, chairman of the Committee on the Judiciary, reported on candidates for judicial office and Samuel M. Lane made an interim report on the work of the Committee on Courts of Superior Jurisdiction.

The resolutions relating to the Lodge-Gossett Resolution, proposing an amendment to the Constitution of the United States with relation to the method of electing the President and Vice-President, were presented by the Committee on Federal Legislation, Eduardo Andrade chairman, and were approved. The Annual Meeting also approved a report by the Committee on International Law, Adolf A. Berle, Jr., chairman, recommending the ratification of the North Atlantic Treaty. Also approved was a report by the Committee on Administrative Law, Robert M. Benjamin, chairman, which opposed the enactment of S. 527, a bill introduced by Senator McCarran to provide uniform

rules of practice and procedure before Federal Administrative Agencies.



ON APRIL 26th the opening of the Annual Members' Exhibition of Sculpture and Painting was held. The exhibition this year attracted many more exhibitors than before and everyone agreed that the quality of the show was the highest it has been. Julian Levi, the noted artist, served as consultant to the Art Committee and selected and arranged the hanging of the pictures. The chairman of the Committee is Clarence J. Shearn, Jr., and the chairman of the Subcommittee in charge of the show is René A. Wormser.



THE SPECIAL COMMITTEE on Public and Bar Relations, which has general supervision over the radio and television program "On Trial," produced by the American Broadcasting Company in co-operation with the Association, was informed by the Institute for Education by Radio that "On Trial" had received "Honorable Mention" by the Institute under its classification of Public Affairs Programs. The special citation reads:

For clear and cogent presentation of opinions on public affairs in a format which requires both a statement and a defense of the point of view."

At the present time five television stations are carrying "On Trial": New York, Washington, Baltimore, New Orleans, and Fort Worth, and it is carried by 158 stations on the radio network.



FOUR HUNDRED MEMBERS and guests of the Association heard Henry G. Waltner, Jr., Insurance and Social Security Department, Standard Oil Company (New Jersey), on May 11, explain New York's New Disability Benefits Law. Mr. Waltner emphasized the fact that the legislation is unique in many respects and represents a genuine effort to devise a program which would pro-

vide for the minimum of governmental control. The lecture was held under the auspices of the Association's Committee on Insurance Law, of which R. Graham Heiner is chairman.



AT ITS APRIL meeting the Committee on Municipal Affairs, Ernest Angell, chairman, had as its guest Charles Preusse, First Assistant Corporation Counsel of the City of New York. The Committee discussed with Mr. Preusse a report of its subcommittee on the Corporation Counsel's Office. Also considered was an interim report on procedures followed by city departments in connection with the revocation of licenses.



ON MAY 5 Abraham L. Pomerantz discussed before the Section on Trials and Appeals of the Committee on Post-Admission Legal Education, of which Ralph M. Carson is chairman, the preparation and presentation of a stockholder's derivative action. Leonard P. Moore led the discussion.



ON MAY 24 the Committees on International Law and Foreign Law, of which Adolf A. Berle, Jr., and John N. Hazard are the chairmen, entertained at a dinner Dr. José Pereira Lira, Chief of the Civil Staff of the President of the Republic of Brazil. Dr. Lira had accompanied President Dutra on his state visit to this country. Dr. Lira's remarks at the dinner are published in this number of *THE RECORD*. Also present at the dinner were Dr. Lira's son, Paulo H. P. Lira, and Dr. Arnaldo Vasconcellos, Deputy Consul of Brazil in New York.



ON APRIL 29 the Association sponsored a luncheon in honor of The Honorable Sean MacBride, Minister for External Affairs in the Government of Ireland. Mr. MacBride, who has had a distinguished career at the bar, spoke briefly concerning the present status of the legal profession in Ireland. He was accompanied by

The Honorable Garth Healy, Consul General for Ireland, and The Honorable Sean Nunan, Irish Minister and Plenipotentiary.



ON JUNE 1 the Committee on the City Court of the City of New York, Lester Kissel, chairman, held its Annual Dinner at the House of the Association. A number of judges of the City Court were present, and the chairman outlined the work the Committee had done during the past year.



THE ASSOCIATION'S COMMITTEE on State Legislation, John A. Bross, chairman, has concluded its work for the year. It is of interest to note how closely the legislative pattern follows its recommendations. Of the 102 bills the Committee disapproved, only six became law, while approximately half the bills favorably reported by the Committee were enacted.

The Calendar of the Association for June

(As of June 14, 1949)

June 1 Dinner of Committee on the City Court of the City of New York

June 6 Dinner Meeting of Committee on Professional Ethics
Dinner Meeting of Planning Committee of Citizens Committee on Improvement of the Divorce Laws

June 7 Annual Dinner Meeting of Executive Committee
Meeting of Entertainment Committee

June 15 Meeting of the Committee on Admissions
Dinner Meeting of Committee on Bankruptcy and Corporate Reorganizations

June 16 *Adjourned Annual Meeting of the Association 4:45 P.M.*
Dinner Meeting of Committee on Municipal Affairs
Meeting of Committee on Post-Admission Legal Education

June 20 Meeting of Committee on the Municipal Court of the City of New York

June 21 Meeting of the Joint Committee on the Lawyers Bureau

Address*

By Dr. JOSÉ PEREIRA LIRA

Chief of the Civil Staff of the President of the Republic of Brazil

ON THE OCCASION OF A DINNER IN DR. LIRA'S HONOR
AT THE HOUSE OF THE ASSOCIATION, MAY 24, 1949

I am most happy to be here and to enjoy the company of the members of The Association of the Bar of the City of New York, and I warmly thank you for this privilege.

As a jurist and professor, I have always found it instructive and enlightening to study the records that speak so eloquently of the lofty origin and the exemplary functioning of your organization. One must admit, on glancing through your history, that few professional societies can boast of such a galaxy of eminent figures both past and present as that which graces your membership lists.

This Association can proudly claim that it has realized the purposes for which it was created, namely "to maintain the honor and dignity of the profession of law, to promote the due administration of justice." I greatly admire the courage of the fathers of this society who arose to fight against bitter odds, for justice and the establishment of better legal standards.

The broadness of the sphere of influence of your Association is evidenced by its exceptionally constructive contributions in legal matters affecting all fields of activity, both domestic and international. We are well aware that the list of this society's attainments is an endless one, ranging through its many years of guardianship of legal rights. Whenever any occasion has arisen to threaten constitutional rights or immunities, the challenge has always been met by members of your Association. It is fitting to recall here the name of the great Samuel J. Tilden, whose immense intellectual vigor and fondness for facts and action won him lasting fame in the annals of American jurisprudence.

* On May 24 Dr. Lira was entertained at the House of the Association by the Committee on International Law, Adolf A. Berle, Jr., chairman, and the Committee on Foreign Law, John N. Hazard, chairman. Dr. Lira is a distinguished legal scholar and has occupied many posts in the government of Brazil.

I appreciate the opportunity which this visit has afforded me of rendering to this institution the tribute of my admiration.

I take this opportunity also to emphasize that the battle for legality is permanent and ever the same in all climes, whether east of the Pyrenees or west of them, whether above the Equator or below it. On this theme, it would be wrong to apply too literally the saying of the great Pascal that "three degrees of latitude reverse all jurisprudence" and that "a meridian decides the truth."

The shape of oppression is ever-changing, but its substance continues to be the same, whether it be spawned by reaction or fed by the dregs of demagogery. We have had, in Brazil, a few difficulties, now completely overcome and out-stripped. Following the monarchical peace and the bloodless establishment of the Republic, consolidated by our Founding Fathers,—we suffered from the disease of strong regimes, of which we cured ourselves rapidly and definitely by force of Democracy restored.

As a Member of Parliament, twice elected, and as collaborator in the drawing up of a constitutional charter, I witnessed the eagerness with which the Brazilian people expressed and won on the public square the right to go to the polls on unpostponable dates and to chart their destinies by rule of majority, while respecting the standards of collective morality. A nameless soldier from the ranks of the jurists in my country, I had the honor, in 1943, to carry before the Supreme Federal Court the voice of my colleagues assembled in a memorable Juridical Congress which took place shortly before the political campaign which led to the drafting of the present Constitution of Brazil.

Mr. Berle, when Ambassador to Rio de Janeiro, witnessed that the reorganization of Brazilian political institutions was the outcome of a generalized aspiration of the people, which was inspired and directed entirely by those who in Brazil dedicate themselves to the service of law.

These very same servants of law,—professors, lawyers, magistrates, jurists—have known also how to stem the offensive of those forces, self-labeled as democratic, but which are in reality Trojan

horses set upon wreaking destruction within the Fortress of Democracy.

I have heard with deep emotion the names mentioned here of eminent Brazilian jurists whose lights have brought us much benefit: Chief Justice José Linhares, Ambassador Cavaldo Aranha and the jurist Saboia de Medeiros, outstanding personalities in our public life. Mr. Berle has referred to the splendid examples given to the world by Baron Rio Branco, by Afrânio de Melo Franco and by Ruy Barbosa.

The memory of the latter—who shall ever be foremost—is being honored especially this year by Brazilian jurists and by all Brazilians, with the celebration of the centennial of his birth.

It is with one of his thoughts that I want to terminate this address. On September 10, 1928, relates the biographer who was one of his disciples, he received while sick in bed and almost on the eve of his death the visit of Charles Evans Hughes, then Secretary of State and later Chief Justice of the United States. At that moment, so charged with drama, the Master spoke to his distinguished friend and to future generations of Brazilians:

"We have, Sir, the same destinies as you. We have a common destiny with the United States: the destiny of co-operating with you, to the extent of our powers, in the phase of liberation of the Nations, in political morality and in the progress of mankind."

Annual Report of the President for 1948-1949

This report will vary somewhat from that of my predecessor in its organization. The first part will deal with general Association activities and the work of the Special Committees. The second part will summarize the work of the Standing Committees during the past year. Such a summary by the President is made necessary because annual reports of committees will not be published in the Year Book of the Association. I regret that these reports, many of them outstanding and extremely interesting, are not to be published, but the Executive Committee has decided that, for the present at least, the expense of printing them is too great. I record here my gratitude to the members of the Association who worked on the committees and believe the members will agree with me that their work this year measures up to, if it does not surpass, the standards that have been developed by the Association's committees through the seventy-nine years of the Association's existence.

A. ASSOCIATION ACTIVITIES AND WORK OF THE SPECIAL COMMITTEES

1. *Membership*—At the close of the fiscal year the membership of the Association was 4,769, as compared with 4,622 members at the close of the fiscal year 1948. The increase in membership this year was not as great as in the preceding year. This was to be expected because following the war a great many lawyers who had not joined the Association applied for membership upon their return to their professional duties. However, the fact that during the past year 327 applications for membership were received indicates that there is no cause to believe that the Association will not continue to attract the lawyers we need as members. Undoubtedly there are many desirable members of the Bar who still are not members of the Association, and, while the tradition of the Association is opposed to solicitation of membership, our Committee on Increase of Membership will continue to see to it

that those lawyers eligible for membership have the opportunity to make application. Of our total membership 789 are sustaining members. We still believe that this figure will reach the 1,000 mark. Expenses of operation continue to increase, and the hope for the future lies in more sustaining members.

2. *Association Finances*—The close of this year sees the completion of our building improvement program. Although the total cost of improvements was in excess of what was contemplated, the excess was no more than normal for these times. Fortunately, through the careful financial arrangements worked out by our very able Treasurer, Chauncey B. Garver, the financial position of the Association has not been in any way endangered. The building program should be considered as deferred maintenance, and members will appreciate that the greater part of the money spent was not spent on decoration but went for such items as new wiring, new plumbing, elevators and the like. At the same time, the appearance of the building is much improved, for which credit must be given to Mr. Tweed and the members of the House Committee and Art Committee who supervised the decoration.

Our Endowment Fund was organized three years ago to provide a means whereby gifts for the benefit of certain purposes of the Association may be made to the Fund and be deductible for purposes of income and estate taxes. It is the hope that our members will have the Fund in mind and that a custom of testamentary gifts to the Association will in time become established. Gifts to the Fund of three percent notes of the Association due in 1961 are an excellent way for those who place a high value on their membership to demonstrate their interest in the work the Association is doing.

3. *Stated Meetings*—I am particularly gratified at the increased attendance at Stated Meetings. The increase is due in part to the efforts of my predecessor to emphasize the importance of members using this method of participating in the affairs of the Association, and in part to the increased activity of our committees. I suggest to the members that they will find the meetings stimulat-

ing and that the meetings also provide an opportunity to members to meet their brother lawyers in friendly intercourse.

4. *Office of the Executive Secretary*—The activities of the Association could not have been carried on effectively without the service rendered by Paul De Witt. He has been in constant contact with me and with the Executive Committee, and he has kept the various committees posted on the progress made by the other committees. We are all glad that he has had a complete recovery from his illness last winter. I cannot say too much on his worth to the Association.

5. *Legal Referral Service*—The purpose of the Legal Referral Service is to provide legal assistance for those of moderate means who have not heretofore availed themselves of the service that the Bar can give them. The statistics on this are as follows: since July 1946 over 8500 applicants have come in for interviews of whom 3650 have been referred to lawyers. Both the number of applicants and the number of those referred has continued to grow during the past year, the latter showing a 20% increase. The lawyer panel now stands at 450.

There are at present 28 cities and towns in the United States where lawyer reference plans have been established. Such services represent a worthwhile point of contact between the Bar and the community. Our own experience indicates that nearly all of those referred to lawyers through our service have been highly appreciative of the assistance rendered to them by the Bar and in turn by the attorneys with whom they have come in contact. Great credit is due to the lawyers on the panel who have given generously their time and energy.

6. *The Lawyer's Bureau*—This is the employment office maintained by the Association and the New York County Lawyers. The Bureau still has to be subsidized by the two Associations to the extent of \$10,000 a year. As the Bureau becomes better known ways and means of putting it on a self-sustaining basis must be considered. It is recognized that it will be some time before the Bureau is able to build up a confidence on the part of employers that will make it the one place in the city where those

seeking to employ lawyers will turn. During the twelve-month period, April 1, 1948 to March 31, 1949, the Bureau effected 78 placements. The ratio of placements to registrants was 78 to 730, or approximately one placement for every nine registrants. This compares favorably with last year's figures, which were 62 placements to 661 registrants. The Bureau anticipates that during the coming year at least 1,700 law school graduates will be endeavoring to locate employment opportunities in New York City. There is no other central agency which serves young graduates, nor is there any other central agency to serve the experienced lawyer who is seeking a better opportunity.

7. *Activities of Special Committees*—(a) *Committee on Improvement of the Divorce Laws*—This Committee was authorized to carry forward the Association's program for liberalizing the divorce laws of the state by adding grounds additional to adultery for absolute divorce. The Committee was unable to secure the introduction of the Association's Bill in the 1949 session of the General Assembly. It did, however, assist in introduction of a Bill which would create a temporary State Commission to study and analyze the causes and effects of divorce, separation, annulment of marriage and related marital problems. The Committee believed it advisable to encourage the enactment of this legislation as a preliminary step toward the Association's ultimate objective.

To secure the public support, which is necessary if legislation improving our divorce law is to pass, the Committee assisted in the organization of a Citizens' Committee on Improvement of the Divorce Laws. After careful preparatory work, the Committee has held several meetings at the House of the Association. The organization meeting was attended by about twenty people out of fifty who have accepted membership on the Citizen's Committee. Among them were influential leaders and persons particularly interested because of their professions, occupations or other experience. There is real cause to hope that, in spite of the great difficulty of bringing about any change in the present law, the Association will in time see the enactment of its proposed reforms. It is encouraging to note that at least eight other Bar Asso-

ciations in various parts of the state are supporting the program of the Committee, and it is believed that in the coming year almost all Bar Associations in the state will lend their support.

(b) *Committee on the Federal Courts*—This Committee continued to promote its program before the American Bar Association. The Committee's proposals relating to the Supreme Court will again come before the Annual Meeting of the American Bar Association at St. Louis. There is reason to believe that the misunderstanding of the program, which is one of the chief obstacles in the way of approval by the American Bar Association, will be overcome. One of the effective methods used by the Committee to present its viewpoint to the American Bar Association was to secure publication in the American Bar Association Journal for January, 1949, of Owen J. Roberts' address delivered to our membership on December 11, 1948. On that occasion Justice Roberts emphasized the importance of the Committee's work and gave it his full support.

(c) *Special Committee on Military Justice*—This Committee has continued to make an aggressive fight for what it believes are principles fundamental to a sound system of justice in the Armed Services. It has consulted with those in charge of preparing legislation setting up a unified judicial system for the Army, Navy and Air Force. The chairman and members of the Committee all participated in hearings on this legislation. The result of their efforts cannot be judged until the disposition of legislation now before the Congress is finally made.

(d) *Committee on Public and Bar Relations*—This Committee has made marked progress during the past year and has developed a method of organizing its work which permits the Committee to devote its efforts to the development of new projects in its field without becoming involved in the duties of administering individual programs after their approval by the Executive Committee. The Committee sets up *ad hoc* committees which are in direct charge of the programs developed by the Committee. The first of these working groups to be established was that under the direction of Garrard W. Glenn to supervise the presentation of

the radio and television program, "On Trial." The first program was presented on November 22, 1948, and programs have been presented weekly since then, except for one interruption due to network changes. The program is now carried each week by 158 radio stations as well as by 5 television stations in New York, Washington, Baltimore, New Orleans and Fort Worth. No other program with which a Bar Association is connected has such a wide distribution. The gain to the Association is the credit achieved in the linking of its name with what is generally considered a useful and interesting discussion program. There is a further benefit in that the program has served on several occasions as a means for publicizing the Association's own work. The programs on wire tapping, military justice, standards for Congressional investigations and treatment of alcoholics are examples. The program has also contributed to recognition of the Association in the field of radio and television. The working party has been consulted by other networks and has had an opportunity to influence programs of interest generally to the Bar. That the program has been favorably received is indicated by the fact that the television program has been rated in New York City during the past four months as follows: January, 6.0; February, 4.0; March, 4.3 and April, 5.0, which indicates that the audience for the program is upward of 25,000 television sets; radio listeners total well over 1,000,000. Further evidence of the program's standing is indicated by the fact that at the Annual Meeting of the Institute for Education by Radio, held at Ohio State University, honorable mention was given to "On Trial" under the classification of Public Affairs Programs. The special citation read, "For clear and cogent presentation of opinions on public affairs in a format which requires both a statement and a defense of the point of view."

The Special Committee on Public and Bar Relations has for its second project a Teachers' In-Service Training Program in the public and private schools of the city. This course, for which credit will be given by the Board of Education, will develop a better understanding of law and lawyers among school teachers

and will assist them in presenting to their students a proper evaluation of the relationship of law to a democratic form of government. The project is under the direct supervision of an *ad hoc* committee, of which Paxton Blair is chairman.

The Committee's third project is the effort which was reported last year to promote enactment of an amendment to the Federal Income Tax Act which would secure for lawyers and other professional men and salaried workers not employed by corporations the opportunity to build up something in the nature of pensions. A rather remarkable number of other organizations have assured the Committee of their support. The Committee is presently engaged on the difficult problem of getting the support of the Treasury for the bill which the Committee proposes to have introduced. Here the Committee is engaged in work which assists this Association's relations with lawyers generally and with other professional groups.

Meanwhile, the Committee has watched with interest the attention the Association has received in newspapers and magazines, and this probably in greater measure than ever before in the Association's history. It should be emphasized that we have not sought to stimulate publicity by artificial means and that if our relations with the press are improved it is because of the character of work we have been doing. This Association does not need and should not use publicity methods not in keeping with the position the Association occupies in the community.

(e) *Special Committee on Round Table Conferences*—Last year it was reported that this Committee would try a new plan of procedure. This year it was unanimously decided by the Committee to discontinue the new procedure and to reestablish the practice of having the Committee entertain the guest of honor at a dinner preceding each meeting. However, it was decided that these dinners should not be limited to members of the Committee alone, but that any member of the Association who decided to do so could join with the Committee at these dinners. The Committee sponsored six meetings and in advance of each of them members of the Committee met with the speaker to plan the con-

duct of the meeting. This resulted in meetings that were lively and provocative.

(f) *Special Committee on Legislation Relating to Adoption Procedures*—This Special Committee was established by the Executive Committee as a result of the interest aroused by the revelation of the so-called "black market" in babies. The Committee joined with a number of other organizations interested in this problem in sponsoring a forum held at the House of the Association to discuss the problems involved in present adoption procedures. The Committee endorsed four bills which were subsequently passed and have now become law:

Senate Introductory 2202, which prohibits the payment or receipt of compensation for the placing out of children.

Senate Introductory 2111, which re-defines the term "placing out."

Senate Introductory 2196, which amends the Penal Law and the Social Welfare Law with respect to the issuance or renewal of licenses to maternity hospitals.

Senate Introductory 2203, which makes it compulsory for clerks of court in which adoptions are granted to notify the State Commissioner of Health of such adoptions.

The Committee also supported Senate Introductory 2439, which would have made investigation of the propriety of placement and taking of action when placement was found to be undesirable compulsory on courts in which adoptions are granted. The chairman appeared in support of the bill but it was not enacted. It is expected that the Committee will again urge the adoption of this legislation at the next session of the legislature.

(g) *Special Committee on the Unification of the Courts*—The serious congestion of the calendars, particularly at trial term of the Supreme Court with respect to tort actions, has caused great concern to all lawyers and judges interested in the efficient administration of justice. This Special Committee, encouraged by Presiding Justice Peck of the Appellate Division, proposed to the Association a plan for the reorganization of the courts, which

would merge the Court of General Sessions and the County Courts with the Supreme Court, and would also consolidate the Court of Special Sessions and the Municipal Court with the City Court so as to constitute a new Court of the City of New York, with limited jurisdiction in both civil and criminal matters. The plan was approved by the Association and received active support from the press and from many civic organizations. Appropriate constitutional amendments were introduced in the legislature to implement the plan, and although they passed the Senate, they were defeated in the Assembly by a narrow margin. In spite of this setback the Special Committee will urge the adoption of this legislation in the next session of the Legislature. The need for a rational court structure is becoming daily more acute, and there can be no serious doubt that the adoption of the plan proposed by the Special Committee would be the most important step in judicial reform to be taken in this state since the turn of the century.

B. WORK OF STANDING COMMITTEES DURING THE YEAR

The Standing Committees may be divided, as they have been in the past, into four groups:

- I. Administrative Committees which have to do with admissions, entertainment, finance, and the operation of the library and building;
- II. Committees on the judiciary and the administration of justice in general;
- III. Committees which cover public service activities, such as the Committees on Grievances, Professional Ethics, Unlawful Practice of the Law, Legal Aid and Legal Education;
- IV. Committees on Law Reform, State and Federal Legislation and various special fields of law, such as taxation, aeronautics and the like.

I. ADMINISTRATIVE COMMITTEES

1. *Executive Committee*—Under the leadership of a very able chairman, the Executive Committee functioned with care and

dispatch on the matters within its jurisdiction. These include practically all matters which are dealt with by the many committees of the Association and which are summarized in this report. The Executive Committee also kept in close touch with the building program and with the financial condition of the Association.

One of the Executive Committee's duties, carried out with increased effectiveness during the past year, was that of maintaining liaison with the committees of the Association. Members of the Executive Committee were diligent in attending meetings of the committees to which they were assigned, and one of the most interesting features of the Executive Committee's meetings was the reports which they brought back. It was also interesting to note the arts of advocacy displayed by members of the Executive Committee in behalf of projects of committees to which they were assigned.

2. *Committee on Entertainment*—Judge James Garrett Wallace and his Committee continued to provide us with entertainment which brings our members together in the House of the Association and helps to develop a spirit of general friendship. This year the Committee concentrated on the following events:

A musicale, presented by the Lawyers' String Quartet, under direction of Emanuel Green.

A Fall Party, which featured the presentation of "Cox and Box" by the New York University Glee Club. Milton Rettenberg gave a piano recital and Alfred C. Bennett played selections from past Association shows and accompanied the singers, among whom was the chairman of the Committee who sang an original composition about the recent election, written, it was said, to cheer the losers.

The Fourth Annual Association Night came through, as the Committee's report states, "in a blaze of glory." The show, "Ozark Bride" or "The Lass-oo of the Law," was written by Judge Wallace, John F. Devine, Bernard R. Lauren and Eugene A. Leiman. The plot of the show was built around the most revered legend in American folk-

lore, the tale of the travelling salesman and the farmer's daughter. The show was under the direction of Samuel Ross Ballin and K. Bertram Friedman. Mr. Friedman also played the part of Nellie, the Ozark Bride.

3. *Committee on Art*—The work of the Committee on Art fell into three categories:

1. The re-hanging of portraits, prints and pictures that had been removed during the re-decorating of the House of the Association;
2. The Annual Spring Exhibition of members' paintings and sculpture; and
3. The preparation of a catalog of works of art belonging to the Association.

The Fourth Annual Spring Exhibition was a distinct success. Seventy-five paintings were put on display, several of them by artists who had been newly inspired by the previous exhibitions. The show attracted favorable attention in the press, and the Committee was particularly fortunate in having as its consultant Julian Levi, the well known artist, who supervised the selection and the hanging of the pictures.

4. *Library Committee*—The total number of bound volumes in the library is now 271,952. Of these 158,801 were purchased and 113,151 were gifts. There have been added to the library during the past year 3,924 volumes. Expenditures during the year were something over \$108,000. The re-cataloging project is progressing satisfactorily. As my predecessor pointed out, there is a real problem of financing involved in the present rate of expansion of the library. It is to be hoped that during the next year plans for coordinating the collections of the various major law libraries in the city will be made. This should not only bring about economies but also should result in making the collections of the various libraries complement one another, rather than continue in a state of competition.

5. *Committee on Increase of Membership*—I have already in-

dicated that the number of new members this year was not as great as that in preceding years. Here I should indicate that the Committee has plans to enlist the services of the Junior Bar Committee to interest younger lawyers in auxiliary membership. Members can assist the Committee by suggesting to their younger associates the advantages of early membership in the Association. The great hurdle in membership problems is simply inertia, both on the part of the applicant and on the part of our members in suggesting membership to others. Every member of the Association probably knows at least one lawyer who should belong to the Association, and I hope those who read this portion of the report will call the Association and have application papers sent to them for forwarding on to those whom they wish to have as members.

6. *Committee on Admissions*—The Committee, as in the past, has functioned with efficiency and has maintained the standards for membership to which this Association has always adhered. In the midst of its labors the Committee has found time, as in past years, to enjoy itself. One very useful service, in addition to its regular work, which the Committee performs is to discover among our new members those who have particular competence for Committee work. This effort should be continued and, if possible, extended.

7. *Committees on Audit, Investments, Insurance of Association Property and House Committee*—To these Committees the Association owes a debt of gratitude. The care with which the members of the Committees watch over the financial condition of the Association and the maintenance of its property is a notable example of devotion to the best interests of the Association. The House Committee has had the burden of making the day-to-day decisions required by the re-decorating program and has also worked closely with the Executive Committee in developing a program for the insuring and pensioning of the Association's employees.

8. *Committee on Junior Bar Activities*—This Committee was assigned the job of bringing the Association into closer relation-

ship with law students. The Committee has been eminently successful. The device which they have employed was an inter-law school moot court competition. Students attending nine law schools prepared briefs for and argued an appeal involving freedom of speech and the use of sound trucks. The students competed on an elimination basis through moot appellate divisions, courts of appeals and a moot Supreme Court of the United States. Thus, the winning teams argued the case three times in two days. During the two days of arguments six hundred law students were present to hear the arguments and meet members of our Association. I am sure no other effort could have attracted so many law students to our House or left with them such definite proof of our interest in their future welfare. I should like to record the Association's thanks to Lee McCanliss, who donated a sterling silver Revere bowl in honor of Judge Samuel Seabury as a prize for the winner of the competition. The Samuel Seabury prize will remain in competition for ensuing years and be on display at the law school which won the competition.

The Junior Bar Committee also gave assistance to the Judiciary Committee in its campaign to inform the public of the importance of the election of a new Surrogate. The members of the Committee developed an educational program, which was given wide publicity in the press and which culminated in the nomination of former Supreme Court Justice George Frankenthaler and General Sessions Judge John A. Mullen as candidates for the office of Surrogate. I am sure that the Association should continue to emphasize the contribution that our younger members can make.

9. *Committee on Memorials*—The experiment of printing the memorials in a separate volume will be continued. I take this opportunity to commend the chairman of the Committee not only on his diligence, but on his wise selection of members to prepare the various memorials. It is important that this part of the history of our profession be held to a high standard, and I solicit the co-operation of our members with the Committee to the extent of willingly accepting assignments for the preparation of memorials.

II. COMMITTEES ON THE JUDICIARY AND THE ADMINISTRATION OF JUSTICE IN GENERAL

The work of these Committees is the test of our Association's contribution to the welfare of the community. The improvement of the administration of justice was the first aim of this Association and should continue to be its major purpose.

1. *Committee on the Judiciary*—The Annual Report of the Committee on the Judiciary has been circulated to the membership. It records a year of successful activity. Judge Bruce Bromley was appointed to the Court of Appeals; Judge Frankenthaler was elected to the Surrogate's Court; and the Justices of the Supreme Court elected at the last election, with one exception, were described by the Association as qualified. There is no cause to doubt that the judges standing for reelection next Fall, Justice Pecora for the Supreme Court, Judge Wallace for the Court of General Sessions and Justice Carlin for the City Court, all of whom the Committee has found "well qualified," will be returned to the bench.

The Committee will also continue to urge that Judge Bromley receive bipartisan endorsement for election. As the Committee has said, "Not to give bipartisan endorsement might be to lose a judge of great capacity and promise, to discourage the appointment of qualified lawyers and encourage use of the office as a reward for political aspirants, to cheapen the office by making appointment unattractive to highly qualified lawyers not certain of bipartisan endorsement for election."

A notable part of the Committee's activity in the past year was the educational program respecting the Surrogate's Court, which eventuated in the election of Surrogate Frankenthaler. Former Surrogate James A. Delehanty has said of this effort, "While it has often been said—and many times with justice—that the activities of the organized bar in respect of judicial nominations have been often inept and many times too late, no one can fail to recognize the energy and skill with which your committee addressed itself to the task of making the public realize the public harm inherent

in a political misuse of the Surrogate's Court. I do not think that there has ever been a more dramatic or a more successful awakening of public interest in the maintenance of judicial standards than that accomplished by your committee."

During the past three years the Committee on the Judiciary has been extremely effective and I am sure the members of the Association would want me here to express their thanks to the chairman of the Committee, Bethuel M. Webster, for his untiring effort to secure the selection of judges who are worthy.

2. *Committee on Courts of Superior Jurisdiction*—This Committee is entrusted with the responsibility for watching the work of the New York Supreme Court, the United States Circuit Court of Appeals, and the United States District Court. So far as concerns the United States District Court, the Committee had three objectives: first, to secure the enactment by Congress of legislation creating four additional judgeships; second, to improve motion practice; and third, to consider the acceptance by federal judges of extra judicial employment. There can be no question that additional judgeships are needed in the District Court, and the political atmosphere is now favorable for the creation of these posts. Pending increase in the number of judgeships the Committee has sought ways to save the time of the Court in the argument and dispositions of motions. Some eleven recommendations have been made, and the Committee is hopeful that the court will put these recommendations into practice.

As to the Supreme Court, the Committee has watched with interest the effect of the separation of tort and commercial cases at trial term, which the Committee successfully advocated last year. However, more needs to be done, and the remedy, as I have said, seems to be reorganization and consolidation of our antiquated judicial system.

The Committee has also given attention to the system under which jurors are selected for service in New York County. Excessive exemption from jury service is one of the problems. Under the leadership of Presiding Justice Peck and Mr. Justice Botein and with the assistance of the Committee, measures have been

taken to correct the situation. Other matters considered by the Committee were an improvement in the procedure for obtaining rulings at examinations before trial and the abolition of the Friday morning motion calendar in the Appellate Division. The vigor with which the chairman of the Committee has worked this year is to be particularly commended.

3. *Committee on the Surrogates' Courts*—The work of this Committee is an example of what can be done in a practical way for our membership by an active Committee under the leadership of an able and energetic chairman. The Committee this year prepared standard probate forms, so that the same forms may be used in each of the eight counties in and about New York City. The Surrogates and the Chief Probate Clerks have given the Committee splendid cooperation, and it is hoped that when the forms are adopted they will also be put in use throughout the state. The Committee has also continued to work closely with the Executive Committee of the Surrogates' Association on the amendment to the Surrogates' Act covering service of citation upon an infant and on an amendment relating to ancillary administration of the estates of persons who have disappeared and are presumed dead. The Committee continues with its study of the Model Probate Code. Reports are in preparation on illusory transfers as they affect the Decedent Estate Law and on the expeditious disposition of small estates. A great grist of bills pending before the legislature was examined by the Committee and the conclusions of the Committee forwarded to the Committee on State Legislation. A pleasant and useful custom inaugurated two years ago of giving an informal dinner at the House of the Association to the Surrogates of the Metropolitan Area was continued this spring. The Committee solicits suggestions with respect to the improvement of the laws relating to Surrogates' practice.

4. *Committee on Criminal Courts, Law and Procedure*—The by-law under which this Committee operates is the most detailed grant of authority made to any Committee. This year the Committee was in the process of re-organization and devoted most of

its energies to reporting on some measures pending in the Legislature. The Committee still does not receive from the Mayor requests for their opinion on his appointments to the Magistrates' Courts, but it is hoped that this practice will be resumed.

5. *Committee on the City Court*—The Committee continued to observe with interest the operation of pre-trial hearings instituted at its suggestion in the City Court. It also, in cooperation with the Chief Clerk of the City Court, studied ways and means of remedying the delayed calendar conditions. With respect to commercial cases the conditions are somewhat improved since last year. The Committee has followed the plans and proposals of a new court house for the City Court and has given active co-operation to the Association's Special Committee on the Unification of the Courts.

6. *Committee on the Domestic Relations Court*—The Committee was diligent in visiting the courts and watching their actual operation and also in reviewing legislation affecting the court. Particular attention was given to the school part, which is a separate section of the court handling habitual truants.

7. *Committee on the Municipal Court*—This year this Committee completely revised its method for examining the qualification of judicial candidates. Sub-committees conducted personal interviews and then made recommendations to the full Committee. Only in cases where the Committee was in doubt were the candidates asked to appear before it. The new system has worked well from the standpoint of the completeness of the information obtained, time saved and the agreeable reaction of the candidates. The Committee also distributed to the members of the Association a full printed report, including biographical material, on the candidates. The Mayor, unfortunately, during the past year continued his recent policy of not submitting to the Committee names of candidates under consideration for interim appointments. The Committee was also disappointed that its recommendation to the Mayor for re-appointment of Justice Keyes Winter as Presiding Justice was not accepted. The Committee was active in reviewing pending legislation and three bills, ap-

proved by the Committee, became law. As usual, the Committee was asked to investigate a substantial number of complaints affecting the administration of the Municipal Courts but found that none of the complaints warranted any action by the Committee.

III. PUBLIC SERVICE COMMITTEES

This group of Committees upholds the standards of the profession, its education and the availability of its services to the public. All these activities directly affect the public welfare.

1. *Committee on Grievances*—This year marked the retirement of the Committee's Attorney-in-Chief, Einar Chrystie, after forty-five years of exemplary service to the Association. A sketch of Mr. Chrystie's life, the achievements of the Committee during his term of office, and a tribute to Mr. Chrystie's services were printed in the January issue of *THE RECORD*. Since the full report of the Committee will be published in the Year Book, I record here only that since May 1, 1948, the Committee dealt with 1,529 complaints. The Committee has recommended during the year that disciplinary proceedings be instituted against fourteen attorneys, and there are twenty-one such proceedings now pending in the Appellate Division. These figures serve to point out the excellent work this Association of four thousand members is doing in helping to police the activities of the thirty thousand lawyers in New York City.

One other matter bears mention, and that is the participation of lawyers in obtaining Mexican mail order divorces. This has been a troublesome matter for the Committee, and proceedings were instituted to test the propriety of such conduct. In *Matter of Anonymous* (274 A.D. 89), the court stated that a repetition of such conduct in the future on the part of the lawyers involved would be deemed sufficient basis for disciplinary action.

2. *Committee on Professional Ethics*—Approximately thirty-three inquiries were considered by the Committee at its meetings and replied to formally by written opinion letters over the chairman's signature. These opinions are indexed and available in the

Association library. In addition, the chairman has answered numerous telephone inquiries at the rate of ten or twelve per week. Problems raised involved solicitation and advertising in general, the advertising of "specialized legal service" to lawyers only, conflicting interests, partnership and firm names and intermediaries. The Committee's proposal of a court rule regarding professional announcements has not been acted upon in the First Judicial Department.

3. *Committee on Unlawful Practice*—The Committee held monthly meetings, and a subcommittee considered complaints between meetings. Close liaison was maintained with committees of other bar associations and with the Inter-Bar Association Committee. During the year particular attention was given to the subject of estate planning and estate planners, but final action has been postponed until the decision of the Court of Appeals in the *Bercu* case is known. The Committee filed as *amicus curiae* a short brief in the *Bercu* case, supporting the position taken by the New York County Lawyers Association as respondent.

4. *Committee on Legal Aid*—The Association's thanks to the retiring chairman of the Committee on Legal Aid, Orison Mar-don, should be recorded here. Largely through his effort, loyally supported by his Committee members, the extension of organized legal aid to the criminal part of the United States District Court for the Southern District of New York is now a reality. It will be recalled that Mr. John D. Rockefeller, Jr. generously pledged \$15,000 to the support of this activity on condition that an additional \$30,000 be subscribed by December 31, 1948. With the aid of a number of public-spirited citizens and the special help of ten law firms, the required funds were collected. With appropriate ceremonies on January 7, 1949, the Federal Courts Division of the Legal Aid Society was inaugurated, and Chief Judge Knox expressed that Court's appreciation for the contribution made by the Association's Committee. The Committee also continued to keep in close touch with the work of the Legal Aid Society, and in May sponsored a reception for Mr. Thomas Lund, Secretary of the Law Society of England, who is responsible for many

of the provisions incorporated in the Legal Aid and Advice Bill which is expected to pass Parliament before the summer is out.

5. *Committee on Legal Education*—This Committee has, with the approval of the Executive Committee, recommended to the Court of Appeals the discontinuance of accelerated law courses. The Committee has been interested in reviving the Joint Conference on Legal Education and has considered in particular the question of approved law schools in the State of New York. Only one law school in our state has not been given approval by the American Bar Association. This is the New York Law School which discontinued operation in 1941 and resumed operation in October, 1947. As the Committee states, "It is most desirable that all law schools operating in the State of New York and approved by the Department of Education, should also have the approval of the American Bar Association, so that their graduates will be entitled to apply for admission in other states of the union."

6. *Committee on Post-Admission Legal Education*—This has been a highly successful year. Seven important lectures were sponsored by the Committee: October, "Inside the English Courts," William Dwight Whitney; November, "The Settlement of Labor Disputes," Harry Shulman; December, "The Lawyer in Business, His Opportunities and Contributions," Carroll M. Shanks; January, "World Organization," Robert M. Hutchins; February, "The New Judicial System in New Jersey," The Honorable Arthur T. Vanderbilt; March, Address by General Dwight D. Eisenhower. The Eighth Annual Cardozo Lecture was delivered by The Honorable William O. Douglas on April 12th. His subject was "Stare Decisis." All the lectures were well attended. The Committee has inaugurated the practice of publishing in book form the Cardozo lectures. The subscription list for these volumes is still open, and the Committee hopes that more members will take advantage of this opportunity.

Two new Sections were added to the Committee's program this year, bringing the number up to nine. These new Sections are the Section on Trade Regulations and the Section on the Economics of the Legal Profession. In all, the Sections held fifty-three

meetings during the year, and all meetings were very well attended. Due to the by-law provision for rotating membership on committees of the Association, the Committee loses the services of the chairman, Cloyd Laporte, and the secretary of the Committee, Werner Ilsen, both of whom have rendered outstanding service.

IV. COMMITTEES ON LAW REFORM, STATE AND FEDERAL LEGISLATION AND SPECIAL FIELDS OF LAW

1. *Committee on Law Reform*—The Committee on Law Reform reports no success with its legislative program and records again the failure of the legislature to adopt the Association's recommendation of a more liberal deposition and discovery practice. Although this long needed reform has the support of virtually all lawyers and should have the energetic support of those members of the Association who are in the legislature, the opposition to the Bill is such that this year it was not reported out of committee. The Law Reform Committee also advocated adoption of legislation that would extend to churches and other charitable institutions the benefits of the nominee system of holding securities. This legislation also did not become law, although it did pass the Senate. The Committee reports that it still has under study legislation dealing with the contributions among joint tort feasors, an advisory system of referees, recognition of foreign divorce decrees, and a report on taxable costs and disbursements. About a year ago the Executive Committee asked the Committee on Law Reform to see whether a remedy could be found for the legislative practice of considering important measures in the closing hours of the session when adequate consideration is impossible. The Committee has made no progress in respect to this assignment.

2. *Committee on State Legislation*—This Committee, as usual, worked hard and long. Formal reports were printed in seven bulletins on 172 bills. Of 70 approved bills, 37 became law and 33 were defeated. The Committee disapproved 102 bills, of which only six became law. In view of the increasing cost of printing,

the Committee decided to include in its printed bulletins only reports concerning bills of substantial interest to the legal profession. Reports of lesser interest are forwarded in mimeographed form or are incorporated in letters to the Governor's Counsel and members of the legislature concerned. As the very able chairman of the Committee points out, the work of his Committee would be greatly facilitated if the chairmen of other committees interested in legislation would notify him of measures of interest to them as early in the session as possible. The Committee on State Legislation must act promptly, and where a specific request is received from the Governor comment cannot be delayed. It is because of this need for quick action that the by-laws place on other committee chairmen the burden of keeping the Committee on State Legislation advised of action they take and, indeed, prohibits them from publicizing such action until clearance has been obtained from the Committee on State Legislation.

3. *Committee on Federal Legislation*—This year the Committee on Federal Legislation has prepared and distributed to the Congress eight final reports and has prepared one final report, that on the proposed constitutional amendments relating to the method of selecting the President and Vice-President, which was submitted to the Association at its Annual Meeting and approved at that meeting. The reports are uniformly of a high standard and represent intelligent and devoted work. The Committee examines all public bills introduced in the Congress. Preliminary reports have been made on over three hundred bills, and the Committee also stands ready to send representatives to hearings on legislation it deems of particular importance. Reports sent to the Congress are as follows:

1. Establishment of uniform qualifications of jurors in the Federal Courts (S. 49 and H. R. 2051) and to provide for a jury commission in each district court (S. 50 and H. R. 2050). These bills were approved.
2. Amendment of Securities Act of 1933 to reduce information required for venture capital for new enterprises (S. 23). This bill was disapproved.

3. Amendment of Administrative Procedure Act to eliminate overlapping jurisdiction of federal agencies and probably to limit their jurisdiction in certain cases (S. 14). This bill was disapproved.
4. Amendment to Nationality Act of 1940 to eliminate provision preventing naturalizations within sixty days prior to a general election (H. R. 1951). This bill was approved.
5. Crypto-Security Bill, to prevent disclosures of cryptographic information (S. 277; also H. R. 1263). This bill was approved, subject to specified suggestions.
6. Omnibus Security Bill, to require registration of certain persons who have foreign espionage training, etc. and to make certain other provisions for security of information (S. 595 and H. R. 3776). These other provisions were approved, but bills were disapproved on ground that registration provisions required further study.
7. Omnibus bill of some 130 sections designed to pick up errors in last year's codification of Titles 18 U.S.C. (Criminal Code and Criminal Procedure) and 28 U.S.C. (Judicial Code and Judiciary) and to make certain further changes in them. (H. R. 2168 and a substitute for it, H. R. 3762). This bill was approved except for two sections that were disapproved, two sections on admiralty and bankruptcy (on which it expressed no opinion), and except that as to a group of new sections it expressed no opinion as to their necessity. The Committee also advanced again certain suggestions made in its report of April 20, 1948 in connection with the then pending codification bill. The admiralty and bankruptcy provisions were called to the attention of the appropriate committees of the Association.
8. Group Libel Bills (H. R. 2269, 2270, 2271, 2272 and 2273). These bills were disapproved.
9. Proposed constitutional amendments relating to the method of electing the president and vice-president (S. J. Res. 2 and H. J. Res. 2). Certain provisions were approved but certain others were disapproved as requiring further consideration. This report was approved by the Association.

In addition the Committee has under consideration or is working on draft reports on the following matters:

- a. Mundt-Nixon Bills (S. 1194 and H. R. 3342), the Ferguson Bill (H. R. 3358).
- b. Establishment of Department of Transportation (S. 402 and H. R. 306).
- c. Elimination of certain foreign residence or foreign voting as a ground for loss of citizenship (H. R. 1915, S. 588 and S. J. Res. 47).
- d. Reorganization Bill (S. 526 and H. R. 2361).

One final important service of the Committee should be mentioned, and that is the examination of five bills relating to procedures in Congressional Committee investigations. A report analyzing these bills in the light of the standards established by the resolution of the Association adopted at its meeting of December 14, 1948, was prepared. This report was sent to the Committee on the Bill of Rights in the belief that Committee would deal directly with the Congress on this important matter.

4. *Committee on Labor and Social Security Legislation*—Two important reports were prepared by the Committee on Labor and Social Security Legislation and transmitted to Congress. The first report was on what is commonly referred to as "overtime on overtime," and there is some reason to believe it has affected the course of legislation on this subject. The second report was a clear and comprehensive analysis of the Taft-Hartley Law. In a highly controversial field the chairman was able to get his Committee to agree on principles which must be considered if the Congress is to adopt workable labor legislation. The report was commented upon favorably by the press.

5. *Committee on Administrative Law*—At the Annual Meeting in May the Committee on Administrative Law presented an excellent report on Senator McCarran's Bill (S. 527) providing for the creation of an Administrative Rules Commission charged with the duty of formulating rules for Federal Administrative Agencies. That report is published in this issue of **THE RECORD**, and the Association agreed with the Committee in disapproving the legislation. The Committee is also engaged in watching the

operation of the newly adopted Federal Administrative Procedure Act and has a sub-committee at work on the Federal Administrative Practitioner's Act. Two other scholarly studies by the Committee will be presented to the Association next fall. One of these is in the relatively new field of federal legislative oversight of various agencies. The second report is of importance to all practitioners in this state, because it deals with the Committee's recommendations for the revision of Article 78 of the Civil Practice Act and with the jurisdiction of the Court of Appeals to consider appeals involving administrative determinations.

6. *Committee on Patents*—The Committee considered ways and means of increasing the efficiency of the Patent Office and also considered certain changes in the new rules of practice which were proposed by that office. Through the efforts of a member of the Committee the contributory infringement bill, which was endorsed last year by the Committee, has been introduced in the present Congress by Congressman Celler, Chairman of the House Judiciary Committee, as H.R. 3866.

7. *Committee on Copyright*—This Committee spent a good deal of time in analyzing the changes in the Berne Convention effected by the recent International Copyright Convention in Brussels. It was the position of the Committee that the changes adopted at Brussels would make adherence by the United States to the International Copyright Convention difficult. At the request of the Copyright Section of UNESCO, the Committee also attempted to answer an elaborate questionnaire, but was impeded in this work by the fact that the questionnaire was drawn with reference to French law rather than our own law. The Committee had at its meetings the following guests: Sam Bass Warner, Register of Copyrights, Arthur Fisher, Associate Register of Copyrights, and John Schulman, observer for the United States at the Convention in Brussels. The Committee also reported to Congress on H.R. 2285 and was successful in urging that there be eliminated from the Bill a provision that the Copyright Office be given authority to forward for deposit in foreign countries copies of works produced within the United States.

8. *Committee on Trade Regulations and Trade-Marks*—Inspired by a change of name and increase in jurisdiction, this Committee has had a full year. In the field of trade-marks the Committee has in preparation a report on the "Deposit System of Trade-Mark Registration" and is giving attention to proposed amendments of the Lanham-Trade-Mark Act of 1946. Numerous bills in the field of trade regulation have been studied by the Committee and particularly S. 1008 and H. R. 2222, which provide for "a moratorium with respect to the application of certain antitrust laws to individual, good faith delivered price systems and freight absorptions." One of the functions of committees of the Association dealing with special branches of the law is to keep the membership informed of new developments. The Committee on Trade Regulations has sponsored several lectures in the anti-trust field. The first lecture on "Recent Antitrust Decisions of the Supreme Court" was delivered by the chairman. Then Breck McAllister spoke on the subject of "Basing Points—The Cement Case and Its Aftermath," and in February Assistant Attorney General Herbert A. Bergson gave a lecture on "Current Problems in the Enforcement of the Antitrust Law."

9. *Committee on Taxation*—The Committee on Taxation was asked early in the year by the Chief of Staff of the Joint Congressional Committee on Internal Revenue to make a thorough study of H. R. 6712, the Revenue Revision Act of 1948. The Committee's views were presented to the staff at all-day meetings in October and December. The meetings also gave the Committee an opportunity to urge the recommendations made in their printed reports of 1946 and 1947. As usual, the Committee reviewed a number of bills affecting taxation introduced in the Legislature and made their recommendations to the Governor's office. The Committee, together with the New York State Bar Association and the New York County Lawyers Association, sponsored, but without success, amendments to the New York Estate Tax Law granting "marital deductions" similar to the 1948 amendments to the Federal Estate Tax Law.

10. *Committee on Uniform State Laws*—The chairman of this

Committee reports that during the past year the activities of his Committee were divided into four main phases: "Organization, Anticipation, Procrastination and Frustration." My comments deal only with the fourth phase of the Committee's work, which involved the unsuccessful attempt by the chairman to secure from the American Law Institute a definitive draft of the Institute's Uniform Commercial Code. Late in May the Committee received all 765 pages of the May, 1949, draft, and our chairman promises that the summer will begin the fifth phase of his work—Creation.

11. *Committee on International Law*—For years this Committee has been fortunate in having in its membership lawyers who have had day-to-day practical experience in International Law and also lawyers who have held posts of importance in the conduct of our government's foreign affairs. This year the Committee reported to the Association in the fall on the Declaration of Human Rights, which has been adopted by the General Assembly of the United Nations. The Committee continues to study the more difficult subject of the projected Covenant of Human Rights and will report on that controversial subject at a later date. The Committee will also report to the Association on an intensely practical subject to those practicing International Law: foreign confiscatory or conservatory decrees.

At the March meeting of the Association the Committee presented a resolution which was adopted, approving the Convention on the Prevention and Punishment of the Crime of Genocide, and the Association took steps to recommend to the Congress that the United States ratify the Convention. At the Annual Meeting in May the Committee recommended to the Association, and the recommendation was approved, that the Association favor the immediate ratification of the North Atlantic Treaty. Other matters which the Committee has under consideration are the draft Convention on Declaration of Death of Missing Persons, the proposed Codification of International Criminal Law and the proposal for the establishment of a Claims Commission.

The Committee on International Law has the pleasant duty of

acting as the Association's host to distinguished lawyers of other countries visiting in New York. This year the Committee has entertained the Prime Minister of Ireland, John A. Costello, and The Honorable Sean MacBride, Minister of External Affairs in the Government of Ireland. The Committee in cooperation with the Foreign Law Committee also entertained at a dinner Dr. José Pereira Lira, Chief of Civil Staff of the President of Brazil. Dr. Lira is also well known as a legal scholar.

12. *Committee on Foreign Law*—This Committee continues to foster the education of the bar in general in regard to matters pertaining to foreign law and to encourage scholarly work in comparative law and to recommend to the legislature revision of the New York Statutes of concern to those dealing with the application of foreign law in the courts of this state. The Committee entertains and learns from guests invited to their meetings. This year William L. Dale, Deputy Legal Adviser to the British Colonial Office, Dr. Anton Pestalozzi-Henggeler, a member of the Zurich Bar, and Austin T. Foster, General Counsel of Sacony-Vacuum Oil Company, were guests of the Committee at three of its meetings.

The Committee sponsored a symposium on "Foreign Trade." William Harvey Reeves presided and the speakers were: James G. Mitchell, "World Commerce of the Future: Intergovernmental Domination or Liberty of Enterprise"; Dr. J. G. deBeus, Alternate Representative for the Netherlands to the United Nations, "Foreign Trade of the Netherlands"; Dr. Carlos Davila, former President of Chile, "Foreign Trade of Latin America"; and Winthrop G. Brown, Director, Office of International Trade Policy, Department of State, "The International Trade Organization and its Relationship to Other Aspects of United States Economic Foreign Policy."

The Committee has been zealous to improve the collections of the library. Phanor J. Eder, a member of the Committee, has prepared a bibliography of materials on foreign law to be found in various other libraries. A comprehensive survey of bibliographies on foreign law has been made by Robert F. Weissenstein,

also a member of the Committee. The Committee was successful in securing an amendment to Sections 27 and 28 of the Civil Practice Act, providing the period during which war continues shall not be part of the time limited for commencement of actions by persons disabled to sue by reason of being an enemy alien. This amendment became law on March 28th.

13. *Committee on Admiralty*—The Committee on Admiralty decided not to duplicate the work of the Maritime Law Association in considering the revision of Title 46 of the United States Code, but has examined H. R. 306, which proposes to merge the Maritime Commission in a new Department of Transportation. The Committee disapproves of this Bill. Other matters considered during the year were: review of Title 28 of the United States Code; the question of assignments of error in administrative appeals; and the desirability of changes in both the inland and international rules of navigation, including the impact of radar on present-day navigation.

14. *Committee on Aeronautics*—The chief activity of the Committee on Aeronautics was that of sponsoring a lecture by Joseph J. O'Connell, Jr., chairman of the Civil Aeronautics Board. Mr. O'Connell spoke on the subject of "Air Mail Pay Under the Civil Aeronautics Act of 1938," and his address received widespread publicity.

15. *Committee on the Bill of Rights*—Through the years there has been widespread criticism of the manner in which Congressional Committees conducted their investigations. Acting upon the suggestions for the establishment of fixed standards for these investigations made by Judge Charles E. Wyzanski, Jr. in an address before the Association, the Committee on the Bill of Rights presented an important report on this subject to the Stated Meeting of the Association in November. The report was approved and distributed to all members of Congress and to representative newspapers in every state. The result was almost unanimously favorable editorial comment and the introduction into Congress of several Bills incorporating the recommendations made in the report. The Committee deserves commendation for

the excellence of the report and the steps they have taken thus far. It is to be hoped that the Committee will continue to follow up with vigor the recommendations and take an active part in securing the enactment of satisfactory legislation. Bar Associations are often criticized for their inability to give continuity to their programs. Here is an instance where there is a good chance for the Committee to bring to a successful conclusion work on which it has made a good start.

16. *Committee on Arbitration*—This Committee, in collaboration with the Committee on Real Property, presented a report to the Association which was approved, dealing with abuses which exist in the use of arbitration under the Commercial Rent Law. The Committee intends to take vigorous steps in the next session of the legislature to assure the enactment of remedial legislation. The Committee also reviewed other legislation dealing with arbitration and was active in publicizing the advantages of arbitration in the general field of litigation. A new subcommittee was formed to make a special study of labor arbitrations.

17. *Committee on Bankruptcy and Corporate Reorganizations*—The chairman of the Committee on Bankruptcy and his colleagues are to be congratulated on a constructive year's work. Two reports were submitted to the Association at Stated Meetings (see *THE RECORD*, December, Volume 3, No. 9, p. 386 and February, Volume 4, No. 2, p. 62). The Committee has been fortunate throughout the year in the close cooperation it has received from the members and staffs of the Senate and House Committees on the Judiciary, from the American Bar Association and the National Bankruptcy Conference. I will not attempt to summarize the detailed report of this Committee nor its numerous activities. I recommend, however, to those interested in current developments in the law of Bankruptcy the Annual Report of the Committee, which is on file at the library. It is a well documented introduction to the subject.

18. *Committee on Medical Jurisprudence*—The December Stated Meeting of the Association approved the Committee's report and suggested statute dealing with the rehabilitation of alco-

holics. The proposed legislation has been previously approved in principle by the Academy of Medicine and was subsequently approved by the Medical Society of the County of New York. A bill embodying the legislation was introduced in the Legislature largely for the purposes of further exploration and education. While nearly all of the comments received were favorable to the objectives of the proposed legislation, there has been some disagreement as to detail and method. Members of the Committee met with representatives of the Department of Mental Hygiene and the Department of Public Health of the State of New York, and as a result of these discussions the Committee proposes to revise the bill in certain respects, which will, it is hoped, lead to its support by all interested groups. The Committee promoted public interest in the subject by presenting a television and radio broadcast in the "On Trial" series. The work the Association has done in this field has elicited favorable publicity, and numerous inquiries have been received from many states and from social welfare organizations. The Committee also has been studying the care, treatment and rehabilitation of the mentally ill and sponsored a forum meeting in March on the subject of "Socialized Medicine."

19. *Committee on Real Property Law*—This Committee has had its usual busy year and has been particularly active with legislative matters. More than 80 reports on pending bills were prepared and the Committee also considered 25 reports prepared by members of the Committee on State Legislation, with which committee the Committee on Real Property Law maintained unusually harmonious relations. As I have noted, this Committee, together with the Committee on Arbitration, made a joint report suggesting remedial legislation on the conduct of arbitration proceedings for the determination of rent under the Rent Control Laws. The Committee continues to press for recommendations from the Committee on Law Reform on the subject of enactment of legislation so near the close of the legislative session as to preclude adequate study.

20. *Committee on Insurance Law*—The third year of this

Committee's existence has witnessed a broadening of the scope of its activities and it has also been a year in which the Committee has been of genuine service to the employees of the Association. The Committee made a general review of the subject of employee benefits and recommended as a first step the adoption of group life insurance for the employees. Upon approval of the Executive Committee, such insurance was put into effect. The Committee has also recommended to the Executive Committee a retirement plan under which a fund would be established for the payment of benefits to employees of the Association.

In the interests of our members, consideration was given by the Committee to group life insurance for members of the Association. For a number of reasons, now is not the time to take action on this rather complex subject, but the Committee will continue to give it careful study and make its final recommendations at a future time. For the present the Committee has recommended to the Executive Committee group accident and health insurance for the membership. The Executive Committee is giving intensive study to the report and will make recommendations to the Association next fall.

The Insurance Law Committee has also considered such matters as a change of Section 172 of the Insurance Law and has urged that Section 17 (la) of the Vehicle and Traffic Law should be amended so as to provide for a minimum of \$5,000 of liability insurance to be carried by taxi cab operators. The Legislature failed, however, to adopt a bill providing for this minimum. At the request of the Executive Committee, the Committee on Insurance Law will study the advisability of legislation requiring a specified minimum of liability insurance to be carried by operators of all motor vehicles. Finally, the Committee sponsored a lecture and a discussion on "New York's New Disability Benefits Law." The lecture was given by Henry G. Waltner, Jr., and the attendance exceeded the capacity of the Meeting Hall.

21. *Committee on Municipal Affairs*—This is the first year for this Committee, and a good deal of its time of necessity was given to selecting from the large area of municipal affairs those topics

which seemed of peculiar interest to lawyers. Four topics were selected: certain problems of the Corporation Counsel's Office; labor relations with city employees; comparative procedures in the granting and revoking of licenses; and the legal aspects of the city traffic problem. Reports during the next Association year may be expected in all four fields. It is gratifying to note that the Committee has met with a uniformly cooperative attitude towards its endeavors from the Mayor, the Corporation Counsel and his First Assistant, and from the heads and subordinate officials of a number of other departments and offices. The Committee is off to a good start.

Committee Report

COMMITTEE ON ADMINISTRATIVE LAW

REPORT ON THE QUESTION OF UNIFORM RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE, WITH SPECIFIC REFERENCE TO THE MCCARRAN BILL, S.527 OF THE 81ST CONGRESS*

The McCarran Bill (S. 527 of the 81st Congress) proposes the creation of an Administrative Rules Commission charged with the duty of formulating general rules of practice and procedure for Federal administrative agencies. The Commission is to be composed of nine members, four of whom are members of the Committees on the Judiciary of the Senate and House (the chairmen and ranking minority members or the next in seniority willing to serve), and the five others are an Assistant Attorney General (designated by the Attorney General), the head of an independent agency (designated by the President), the senior Chief Circuit Judge willing to serve, a dean of a law school (designated by the President) and a practicing lawyer (designated by the President). It is to operate with the aid of "voluntary and uncompensated advisory committees representative of government agencies and private or professional interests." Under the Bill rules formulated by the Commission will be reported to the Congress and if no adverse action is taken by concurrent resolution the rules will become effective ten days after adjournment.

We are opposed to this Bill on two main grounds.

First, no study has yet been made demonstrating the advisability and practicability of adopting uniform rules of practice and procedure for Federal administrative agencies. While we are in favor of procedural reform which will substitute order and certainty for needless differences and confusion—especially in a field where even the *appearance* of disorder is an irritant to the public and the Bar—the areas in the agencies' procedures which lend themselves to the uniform treatment proposed by the Bill are still largely, if not entirely, unexplored. Until a careful and critical examination of agency practice has been undertaken to determine where and to what extent standardization is feasible, it is in our view premature to create a commission with a mandate, not to gather the facts which would illuminate the problem, but to take action. The danger is that a body formally charged with such a mandate would tend to resolve doubts in favor of action.

Second, even if some degree of procedural uniformity in agency practice were now demonstrably feasible and desirable, we believe that the machinery provided by the Bill is inappropriate and improper. Rules promulgated by the proposed Commission would be binding on all the administrative agencies of the Executive branch. Yet the Commission's four members who

* This report was approved by the Association at the Annual Meeting on May 10, 1949.

would be members of the Congress could, with the concurrence of any one of the other five members, promulgate rules which would become binding in the absence of Congressional action to the contrary, thus circumventing the intervention of a Presidential veto which would be available if the Congress itself sought to impose such rules by legislation. This, we believe, would be an improper invasion by the Legislative of the proper sphere of Executive action. The analogy of submitting to Congressional veto reorganization plans proposed by the Executive, or rules of judicial procedure proposed by the Judiciary, is inapplicable.

It seems worthy of some notice that the suggestion for all-inclusive uniformity of procedure has been directed first on the administrative agencies rather than on the courts although the substantive functions of the different courts are much closer to uniformity than are the functions of the various agencies. Difficult as it would be to unify the procedural rules of the courts, the task would be far more difficult with respect to all Federal agencies with their different types of problems, jurisdictions, and personnel. But consider the wide divergencies even in the practice rules of the various courts which do not seem to demand such drastic treatment as is proposed in the McCarran Bill. Most practitioners rarely reflect on or are in the least bothered by the difference between the Surrogate's Court's citation and petition and the Supreme Court's summons and complaint. The oral complaint permissible in the Municipal Court (Municipal Court Act, Sec. 19) and also in the Justice Court (Justice Court Act, Secs. 127-128-129) is a stranger in other courts. The City Court Act's provisions for the time for serving notices (Sec. 29) and pleadings (Sec. 50) are not the same as those found in the Civil Practice Act (Secs. 117, 257, 263). The Court of Claims Act contains its own procedures differing in many respects from those of the Civil Practice Act, the provisions for interpleader proceedings being one (Sec. 14). The demurrer survives as a term in the Justice Court Act (Secs. 132 and 133) but not in other state procedural acts.

Even within the Civil Practice Act itself, different types of actions or proceedings each have separate procedures. The interlocutory judgment in an action for partition (Sec. 1024) or in a matrimonial action (Sec. 1172) is not applicable to the usual Supreme Court action. In a summary proceeding to recover possession of real property there may be a trial without a note of issue (Sec. 1428).

Though as recently as last year the New Jersey Rules of Civil Practice purported to unify procedure in that State, it still maintains a host of procedural distinctions in the various courts and contains separate provisions for special proceedings and provisional and final remedies. The service of process in matrimonial causes is different than in others (Rules 3:85, 3:86). Practice in the Law Division of the county courts is specifically exempted from certain of the uniform rules (Rule 5:2-1) as is the practice in the Probate Division (Rule 5:3-1).

Among Federal courts, the United States Court of Claims (28 U.S.C. 2501-2520), the Customs Court (28 U.S.C. 2631-2642) and the Tax Court (26 U.S.C. 1110-1121) each has its own procedures apart from those set forth in

the Federal Rules of Civil Procedure. As to the many civil proceedings which the Rules themselves exempt, see Rule 81. And there are distinct Rules of Criminal Procedure.

If it is true that diversity is not confined to administrative agencies, it is equally clear that diversity is not inherently an impediment to administrative justice. The Federal Administrative Procedure Act, which was the culmination of much legislative and executive consideration and deliberation, is itself a testament to the fact that administrative procedures are necessarily diverse. By limiting itself to the fundamentals of fair hearing procedure, the Act inferentially recognized the impracticability of requiring uniformity in administrative procedure in advance of thorough investigation supporting standardization. Those who framed and adopted the Act did not see it as a codifying force. As Congressman Gwynne said, during the debate, in answer to the question whether the Act was designed to require uniformity: "it does not, as a matter of fact, make uniform practice before bureaus and tribunals. It requires these agencies of government in their practice to maintain certain minimum standards." (Administrative Procedure Act—Legislative History, Sen. Doc. 248, 79th Cong., 2d Sess., p. 373.) Mr. David A. Simmons, then President of the American Bar Association, a leading supporter of the Act, in appearing before the Committee on the Judiciary explicitly said that the Act provided "no code of procedure" (*Ibid.* p. 50). So too Mr. Carl McFarland, Chairman of the American Bar Association's Special Committee on Administrative Law, said before the Judiciary Committee that the Act did not propose "to say precisely how agencies shall operate" but simply "to lay down some skeleton or framework" (*Ibid.* p. 75). Senator McCarran, the sponsor of the Bill reported on and one of the sponsors of the Administrative Procedure Act, in the debate on the Act declared: "I cannot emphasize too strongly that the bill now before the Senate is not a specification of the details of administrative procedure. Neither is it a codification of administrative law. It represents, instead, an outline of minimum basic essentials, framed out of long consideration and in the light of the comprehensive studies I have previously mentioned" (*Ibid.* pp. 303-304).

These statements reflect the knowledge, supported by every serious study of administrative procedure, that diversity in procedures stems from, and is perhaps to a large extent the inevitable product of, the diversity of functions among the agencies and indeed even within many single agencies. Thus, every careful investigation in the field has shown that difference in function, in the case of the agencies as a group and in the case of individual agencies, too apparent to require elaboration and, by now, too widely and meticulously noted elsewhere to require repetition here, has produced a correlative difference in procedures. In the face of such a historical and pragmatic development, it is safer to assume, if one is to proceed in the absence of a thorough analysis of the facts, that uniform rules are more likely to produce unfairness than fairness.

To illustrate the problems involved in the McCarran Bill, we have sought to consider the possibility of applying uniform rules on two bases. One basis would be the subject matter of the rule, that is, a rule on subpoenas, etc. The

second basis would be the type of proceeding involved, that is, a rule for licensing, rate making, claims adjustment and the like. In both instances the difficulties in formulating uniform rules in the face of the known facts are formidable.

Taking first possible uniformity on the basis of subject matter, even rules with regard to printing specifications, size and quality of paper used for briefs and pleadings,—a matter which would at first sight seem to lend itself to uniform treatment throughout the agencies—involve problems when standardization is attempted. The F.C.C. recently amended one of its regulations requiring applications and pleadings to be on paper of specified dimensions at the request of a Trade Association upon a showing that the cost involved in complying with the regulation was out of all proportion to the benefit derived by the agency. (Attorney General's Committee on Administrative Procedure, Monograph on the Federal Communications Commission, Sen. Doc. 186, 76th Cong., 3d Sess., Part 3, p. 67.)

Consider, too, subpoenas as a possible subject matter for uniform regulation. This problem represents another area of agency practice in which extreme diversity exists not only with regard to the agency official empowered to issue the subpoena, but also with regard to its geographical scope and the time at which it might be issued. The question of the officer who shall be authorized to issue a subpoena is obviously closely integrated with the organization of the particular agency concerned and would not lend itself to standardized treatment. The scope of the subpoena is closely connected with the needs of the agency and the importance of the issue involved. Thus the Veterans Administration (49 Stat. 2033, 38 U.S.C. 131) and the United States Employees Compensation Commission (39 Stat. 748, 39 U.S.C. 780) may issue a subpoena which is valid within a radius of 100 miles of the place of hearing. The county in which attendance is required is the radius of the subpoenas of the General Land Office in the Interior Department (32 Stat. 790, 43 U.S.C. 102). Under the Longshoreman's and Harbor Worker's Act, mileage and fee for one day's attendance must be tendered to witnesses residing more than 100 miles from the place of hearing (49 Stat. 1921, 33 U.S.C. 924). On the other hand, many agencies do, and must, issue subpoenas which are valid throughout the United States. (See generally, Report of the Attorney General's Committee on Administrative Procedure, Sen. Doc. 8, 77th Cong., 1st Sess., pp. 414-435.) A uniform rule requiring or permitting country-wide subpoenas would be of doubtful wisdom in the case of the Veterans Administration in view of the small claims generally involved and the disproportionate time and expense involved in subpoenaing witnesses who reside further than 100 miles from the hearing. Similarly a uniform rule restricting the geographical scope of subpoenas would hardly be suitable for the S.E.C. or the F.T.C.

The second basis of possible uniform rules, namely rules based on the type of proceeding involved, presents equally great difficulties. A close examination of agency action indicates that uniformity with regard to all licensing proceedings or all rate fixing proceedings, for example, would be practically impossible because of the wide variety in the conduct of these proceedings

depending upon the specific circumstances. Generally, in all proceedings involving licenses, the initial step concerns the transmitting of an application to the agency. These applications of necessity vary in form, content and degree of formality according to the type of license desired. Thus, in F.C.C. licenses for broadcast stations, a detailed application form is required (47 C.F.R. 1.61, 1.71). In other agencies, however, a simple letter indicating the applicant's desire for a license is all that is required since the granting of the license is dependent upon the result of an examination which the agency undertakes after receipt of the applicant's letter. Under the Grain Standards Act, licenses for grain inspectors are issued almost automatically to applicants. (See, generally, Report of the Attorney General's Committee on Administrative Procedure, *supra*, pp. 36-38.)

In passing upon such applications, the agencies concerned have developed a wide variety of procedures. In the F.C.C., an application for a broadcast license is subject to an intensive study first by the bureau of engineering, then by the bureau of accounting and, finally, by the legal section. If it appears that the license should not be granted, a notice of hearing is sent not only to the applicant but also to persons who have previously indicated their desire to be notified and to any other persons who may appear to have an interest. (See, generally, Attorney General's Committee on Administrative Procedure, Monograph on the Federal Communications Commission, *supra*, pp. 14 *et. seq.*) The applicant must indicate within 15 days whether he desires to have a hearing (47 C.F.R. 1.103). Such hearings are generally scheduled 30 days after notice has been sent out. In practice, they may not take place for two or three months because of docket congestion. If depositions are required, the Commission must be notified of that fact as well as of the matters on which testimony is required and the reasons for the need of a deposition (47 C.F.R. 1.202).

In license proceedings under the Live Poultry Act, on the other hand, the action is generally started by the agency by an order to show cause why the license should issue. Since the denial of the license is most frequently grounded on apparent financial deficiencies in the applicant's statement, the time within which the applicant must appear need not be so great since the facts in issue are not complicated and the hearing requires little advance preparation. (Attorney General's Committee on Administrative Procedure, Monograph on the Administration of the Packers and Stockyards Act, Sen. Doc. 186, 76th Cong., 3d Sess., Part 11, pp. 10 *et. seq.*) While failure to appear or to answer in an F.C.C. proceeding results in a denial of the license (47 C.F.R. 1.103), a similar result does not follow in the case of Live Poultry License proceedings. The difference in result stems from the very sound observation that in the latter proceedings, the applicant is very frequently a petty merchant, often suffering from a linguistic handicap who does not understand the nature of the show cause order. The Department's policy in these cases has been to send out a representative to interview the applicant and explain to him the meaning of the show cause order and the reason for his appearance at the proceeding.

Obviously, any general practice rule designed to standardize consequences which should flow from a failure to respond to an agency notice of hearing or

show cause order would be manifestly inequitable if it codified either of the two practices. To require an agency in all cases to follow up its notice by informal inquiry would subject many agencies to unnecessary hardship. By the same token, a requirement that an applicant's failure to appear should result in denial of the license would work a similar hardship on some applicants. Examples of this type of diversity of practice in accordance with the needs of each agency and the type of persons generally involved, even within agency proceedings of the same nature, could be repeated indefinitely. The above seems sufficient to indicate the difficulty of classifying rules of practice on this basis.

Even within a single agency and with respect only to its formal hearings, a requirement of uniformity of procedure presents problems. For example, under the Civil Aeronautics Act there are two types of formal adjudication proceedings in use: (1) formal proceedings before the Civil Aeronautics Board concerning economic regulations (i.e. applications for mail rates, passenger and freight routes, corporate reorganizations, interlocking arrangements, etc.), and (2) formal proceedings before the Board relating to the denial, suspension or revocation of safety certificates. Existing regulations on practice under each of these proceedings differ substantially. For example, proceedings of the first type are almost always initiated by parties other than the agency (14 C.F.R. 285.1), whereas in proceedings of the second type it is the agency which institutes the action (14 C.F.R. 97.10). Regulations with regard to the content of the initiating document differ as regards the degree of specificity and formality required, since in proceedings of the second type punitive or regulatory action by the agency is generally contemplated whereas proceedings of the first type are more in the nature of a petition for agency approval of a contemplated course of action. Again in proceedings of the first type there is no need for formal requirements with regard to service of process nor is there generally any need for answering papers (14 C.F.R. 285.2 (e)); both, however, require regulation in a hearing of the second type (14 C.F.R. 97.12 and 97.13). Formal intervention of third parties is frequently necessary in the first type (14 C.F.R. 285.4) and, although intervention is provided for in the second type, the potentially interested parties who are expressly permitted to intervene are different.

These few random illustrations are perhaps sufficient to indicate the many complex problems which are involved in any proposal requiring uniform rules of procedure. These examples are not adduced as conclusive proof of the unfeasibility or undesirability of some standardization of agency practice and procedure. It may be that study and analysis will show that with regard to certain practices in designated proceedings standardization would in fact be practicable and beneficial. Certainly that cannot be said now.

There is, finally, another aspect of the question. The proposal for uniformity is based in considerable part on the desirability of making knowledge of procedures readily available (e.g., Vanderbilt, "Administrative Procedure: Shall Rules Before Agencies Be Uniform?", 34 American Bar Association Journal 896, 898 [Oct. 1948]). But our experience is that there is no real difficulty in ascertaining procedural rules governing the procedure of any particular agency with which a lawyer may be concerned. Nor would the

adoption of uniform rules of procedure cure whatever difficulty may exist. Even the proponents of uniformity have conceded the probable necessity of permitting agencies to supplement uniform rules (*Ibid.* p. 974); so that the rules governing a particular agency could not after all be known simply by consulting the published uniform rules governing all. Even if such supplementary rules were not permitted, moreover, the supposed uniformity would in our view prove to be illusory. Every statute and rule governing judicial procedure has been, necessarily, the subject of voluminous judicial interpretation. Thus the great bulk of Clevenger's Practice Manual consists not of the text of the New York Civil Practice Act, Civil Practice Rules, Court of Claims Act, Surrogate's Court Act, New York City Court Act, New York City Municipal Court Code, and Justice Court Act, but of annotations of interpretative judicial decisions. Nor has even the process of judicial decision led to uniformity. Thus, as every New York lawyer knows, the statutory provisions for examination before trial have been given different effect in the First Judicial Department and the Second. As to the Federal field, the more recent Federal Rules of Civil Procedure are already subject to the gloss of volumes of judicial interpretation, as the Federal Rules Decisions and the Pike & Fischer Federal Rules Service attest, so that, for example, one cannot tell the scope of deposition practice until one has examined the decisions in the particular district,—if one can tell it with certainty then (see, e.g., "The Attorney's Trial Preparations and Pre-Trial Discovery Under the Federal Rules: *Hickman v. Taylor* Two Years After", 62 Harv. L. Rev. 269). The uncertainty would be far greater with uniform rules of administrative procedure, subject in the first instance to interpretation by a great number and variety of administrative agencies before, if ever, their "true" interpretation was finally fixed by the courts.

For the reasons stated, we are of the opinion that the Bill here reported on should be opposed. We are of the further opinion that any legislation on this subject should be preceded by long and careful study, and demonstration that any rules proposed would be helpful rather than disruptive.

Respectfully submitted,

COMMITTEE ON ADMINISTRATIVE LAW

ROBERT M. BENJAMIN, *Chairman*

JOHN J. CLARKE, *Secretary*
 EDGAR E. BARTON
 HARRIS BERLACK
 ROBERT M. BOZEMAN
 STANLEY BUCHSBAUM
 EDMUND BURKE, JR.
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 RICHARD JONES, III
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 JAMES O'MALLEY, JR.
 HERBERT PRASHKER
 ABRAM H. STOCKMAN
 ALLEN E. THROOP
 EVERETT I. WILLIS

May 10, 1949

At the Annual Meeting of the Association on May 10, 1949, the following resolutions were adopted:

RESOLVED that, for the reasons stated in the report of the Committee on Administrative Law dated May 10, 1949, the Association is opposed to the enactment of the McCarran Bill (S. 527 of the 81st Congress) providing for the creation of an Administrative Rules Commission charged with the duty of formulating general rules of practice and procedure for Federal administrative agencies; and

RESOLVED that, the Committee on Administrative Law is authorized to circulate copies of that report in behalf of the Association and to take such other steps in its behalf as are appropriate to make such opposition effective.

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The Committee on Federal Legislation of The Association of the Bar of the City of New York, which has also considered this Bill (S. 527 of the 81st Congress), concurs in the conclusion of the Committee on Administrative Law that the Bill should be disapproved.

COMMITTEE ON FEDERAL LEGISLATION

EDUARDO ANDRADE, *Chairman*

CHARLES F. YOUNG, *Secretary*
WALTER E. BEER, JR.
MELBOURNE BERGERMAN
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C. WHITNEY DALL, JR.
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CHESTER T. LANE
JOHN D. LEGGETT, JR.

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GEORGE NORRIS, JR.
ISRAEL B. OSEAS
WILLIAM MASON SMITH, JR.
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May 10, 1949

The Library

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"The great law of culture is: Let each become all that he was created capable of being; expand, if possible, to his full growth; resisting all impediments, casting off all foreign, especially all noxious adhesions; and show himself at length in his own shape and stature, be these what they may." THOMAS CARLYLE

This is the third annual compilation of books and articles contributed and written by members of the Association. Once again it mirrors the many spheres of influence in which the legal profession is making itself felt. "Lawyers know life practically," remarked Dr. Samuel Johnson on one occasion. In a great measure the value of these contributions lies in the clear and analytical, down to earth thinking of the members of the bar.

Members of the Bench and Bar who find it difficult to write that book or article may find it helpful to be reminded that Blackstone composed his *Commentaries* with a bottle of port in front of him and found his mind invigorated and supported in the fatigue of his great work by a temperate use of it.*

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